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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,884	01/05/2004	Louis B. Johnson	12080-0002CP	2071
22902	7590	11/16/2005	EXAMINER	
CLARK & BRODY 1090 VERMONT AVENUE, NW SUITE 250 WASHINGTON, DC 20005			PAK, JOHN D	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/750,884

Applicant(s)

JOHNSON ET AL.

Examiner

JOHN PAK

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-13 is/are rejected.
- 7) ☒ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/5/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

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Claims 1-13 are pending in this application.

The following is a quotation of the second paragraph of 35 USC 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10-11 lack antecedent basis for "the attractant." Claim 10 depends on claim 1 and claim 11 depends on claim 10. Claim 1 does not recite an "attractant." The claims are indefinite for this reason.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Betz et al. (US 4,197,319).

Betz et al. explicitly disclose making animal feed that contains feed material, 12% meat meal + 2% ammonium sulfate additive + 0.33% garlic oleoresin additive containing natural combination of resins and essential oils

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occurring in and exuded from garlic. See column 3, lines 35-39; Example 1, Tables I and II; and Example 5, Table III.

Anticipation analysis of claims 1-4 and 10-11

While Betz et al. do not explicitly disclose their animal feed as improving insect repellency of the animal, it is the Examiner's position that the claimed *method of making* the animal feed is nonetheless anticipated because all of the claim-required method steps are explicitly disclosed. Since applicant admits in the specification that the amount of the added garlic is at least 0.1% and the amount of sulfur is at least 0.5% (page 4, lines 17-19), Betz's 0.33% garlic oleoresin + 2% ammonium sulfate is deemed to be sufficient to meet the claim requirements. See also claims 10-11 for similar evidence/admission. As for the feed being suitable for ruminant animal, dog, cat or chicken, it is noted that cattle is explicitly disclosed by Betz et al. (column 3, line 14), and it is the Examiner's position that Betz's exemplified feed material would be suitable for all claim-recited animals due to the nutritional content of Betz's feed. Claims 1-4 and 10-11 are thereby anticipated.

Anticipation analysis of claims 5-6 and 12-13

While Betz et al. do not explicitly disclose in verbatim language attracting ruminant animals with their animal feed, clearly Betz's cattle are attracted to the feed because they were attracted enough to initially eat the feed, which were

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necessarily placed at an accessible location. The dry feed teaches solid form (Example 1; column 4, lines 44-49), and Betz's added amounts of the garlic and sulfur are as discussed above, and such amounts are within applicant's claim features in claims 12-13. The 2% sulfur in claim 13 is interpreted to encompass 2% sulfur compounds, which corresponds to Betz's 2% ammonium sulfate. Claims 5-6 and 12-13 are thereby anticipated.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Betz et al.

Teachings of Betz et al. have been discussed above, and the discussion there is incorporated herein by reference.

The difference between Betz et al. and claim 7 is that Betz et al. do not expressly disclose placing their feed in a wild location. However, Betz's inventive feed material is taught for feeding of animals on pasture, such as cattle (column 1, lines 10-11). Pellets, cubes or large blocks are offered free choice to cattle grazing on a pasture or range (column 4, lines 44-49). Such placement location is fairly suggestive of placing the feed in a wild location since an expansive range would encompass wild locations.

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Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention and the claimed invention as a whole have been fairly suggested by the teachings of the cited reference.

Claims 8-9 are objected to as being dependent upon a rejected base claim, but would be allowable, subject to a search update at the time of the next Office action, if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machines is (571)273-8300.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Examiner John Pak whose telephone number is (571)272-0620. The Examiner can normally be reached on Monday through Friday from 8:00 AM to 4:30 PM. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Mr. Gary Kunz, can be reached on (571)272-0887.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is **(571) 272-1600**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have a question on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JOHN PAK
PRIMARY EXAMINER
GROUP 1600